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11 Life Insurance Company

12 IN THE UNITED STATES DISTRICT COURT  
13 FOR THE DISTRICT OF ALASKA

14 LILA SYCKS and VERNON SYCKS,

15 Plaintiffs,

16 v.

17 TRANSAMERICA LIFE INSURANCE  
COMPANY; and BANKERS UNITED  
19 LIFE ASSUARANCE COMPANY,

20 Defendants.

21 Case No. 3:22-cv-00010-JMK

23 **DEFENDANT TRANSAMERICA LIFE INSURANCE  
24 COMPANY'S MOTION TO DISMISS COMPLAINT**

25 DEFENDANT TRANSAMERICA LIFE INSURANCE COMPANY'S MOTION  
TO DISMISS COMPLAINT - 1

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1           **I. INTRODUCTION AND RELIEF REQUESTED**

2           Defendant Transamerica Life Insurance Company (“Transamerica”)<sup>1</sup> moves to  
3 dismiss the Complaint with prejudice pursuant to Federal Rule of Civil Procedure  
4 12(b)(6), because Plaintiffs, Lila Sycks and Vernon Sycks, have failed to state a claim  
5 upon which relief can be granted. This lawsuit arises from the lapse and expiration of  
6 Plaintiffs’ Last Survivor Flexible Premium Interest Indexed Universal Life Insurance  
7 Policy Number B119812 (“Policy”) in 2021 following Plaintiffs’ failure to pay  
8 premiums owed on the Policy. Assuming the allegations in the Complaint to be true,  
9 there is no question that the Sycks failed to pay premium that was necessary to keep  
10 their Policy in force, after which the Policy expired by its terms. There is also no  
11 question that the alleged conduct by Transamerica satisfied its obligations under the  
12 Policy and the implied covenant of good faith and fair dealing.

13           **II. ALLEGATIONS PLEAD IN THE COMPLAINT**

14           In the Complaint, Plaintiffs assert causes of action for declaratory judgment,  
15 breach of contract, and breach of the covenant of good faith and fair dealing (“bad  
16 faith”) in relation to the lapse and expiration of the Policy for nonpayment of premium.

17           Plaintiffs allege that when they purchased the Policy in 1993, they paid \$50,000  
18 as the “maximum total premium” required under the Policy. Complaint, ¶¶ 7-9.  
19 Plaintiffs allege that for over twenty-eight years, they relied upon the assurances and  
20 protections of the Policy. *Id.*, ¶ 10. Plaintiffs allege that when the Sycks had reached  
21 the ages of 91 and 86, Transamerica announced the Policy would lapse absent payment  
22 by the Sycks of additional premium. A copy of this “lapse notice”, dated June 3, 2021,

24           <sup>1</sup> Plaintiffs also named Bankers United Life Assurance Company (“Bankers United”) as a defendant. Banker  
25 United merged into Life Investors Insurance Company of America (“Life Investors”) in 2001. In 2008, Life  
Investors merged into Transamerica. All references herein to Transamerica include Bankers United unless  
otherwise noted.

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1 is attached to the Complaint as Exhibit 2. *Id.*, ¶ 11. Plaintiffs allege that they asked  
2 Transamerica to withdraw the lapse notice and continue providing the benefits of the  
3 Policy without payment of additional premium, but Transamerica refused this request,  
4 repudiating its obligations under the Policy. *Id.*, at ¶¶ 12-13. Plaintiffs allege that  
5 Transamerica's refusal of the Sycks' request, to maintain the Policy in force without  
6 additional premiums, was made without full and complete investigation by Defendants  
7 into the facts and the law, such that Defendants had no reasonable basis for their  
8 position, and was made as part of a fraudulent misrepresentation of the terms and  
9 conditions and content of the Policy. *Id.*, at ¶¶ 14-15.

10 Plaintiffs seek a declaratory judgment that Transamerica is obligated to fully  
11 perform its obligations under the Policy, is obligated to reinstate the Policy without  
12 lapse, and is obligated to extend to the Sycks the benefits of the Policy without further  
13 demand for additional payment of money from the Sycks. Complaint, at ¶ 19.  
14 Plaintiffs also seek emotional distress and "other non-economic damages." *Id.*, at ¶ 25.  
15 Plaintiffs also allege they are entitled to an award of punitive damages, alleging that the  
16 acts and omissions of Transamerica and its agents "have been outrageous and were  
17 undertaken intentionally by Defendants for the purpose of achieving financial gain at  
18 the financial expense of the Sycks, and with reckless disregard of the interests and  
19 rights of the Sycks." *Id.*, at ¶ 30.

20 **III. AUTHORITY AND ARGUMENT**

21 **A. A MOTION TO DISMISS UNDER RULE 12(b)(6) MUST BE  
22 GRANTED IF THE ALLEGATIONS DO NOT SUPPORT A CLAIM**

23 Federal Rule of Civil Procedure 12(b)(6) ("Rule 12(b)(6)") tests the legal  
24 sufficiency of a plaintiff's claims. In reviewing a motion to dismiss pursuant to Rule  
25 12(b)(6), "[a]ll allegations of material fact are taken as true and construed in the light

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1 most favorable to the nonmoving party.” *Smith v. Jackson*, 84 F.3d 1213, 1217 (9<sup>th</sup> Cir.  
2 1996). Dismissal is proper under Rule 12(b)(6) where a complaint fails to state a  
3 cognizable claim and does not provide the grounds for a plaintiff’s right to relief on its  
4 face. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (“Factual allegations  
5 must be enough to raise a right to relief above the speculative level....”). A claim for  
6 relief in federal court “requires more than labels and conclusions, and a formulaic  
7 recitation of the elements of a cause of action will not do.” *Id.* “Conclusory allegations  
8 of law and unwarranted inferences are insufficient to defeat a motion to dismiss for  
9 failure to state a claim.” *Epstein v. Washington Energy Co.*, 83 F.3d 1136, 1140 (9<sup>th</sup>  
10 Cir. 1996).

11 To survive a motion to dismiss, a plaintiff’s allegations must include “enough  
12 facts to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S.  
13 662, 678, 129 S.Ct. 1937 (2009), quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544,  
14 570 (2007). See also *Navarro v. Block*, 250 F.3d 729, 732 (9<sup>th</sup> Cir. 2001) (“Dismissal is  
15 proper only where there is no cognizable legal theory or an absence of sufficient facts  
16 alleged to support a cognizable legal theory.”); *Ashcroft v. Iqbal*, 556 U.S. 662, 678,  
17 129 S.Ct. 1937 (2009) (“A claim has facial plausibility when the plaintiff pleads factual  
18 content that allows the court to draw the reasonable inference that the defendant is  
19 liable for the misconduct alleged.”). Plausibility is not “akin” to probability, “but it  
20 asks for more than a sheer possibility that a defendant has acted unlawfully.” *Ashcroft  
21 v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937 (2009).

22 In ruling on a Rule 12(b)(6) motion, “a district court may not consider any  
23 material beyond the pleadings.” *Lee v. City of L.A.*, 250 F.3d 668, 688 (9th Cir. 2001),  
24 citing *Branch v. Tunnell*, 14 F.3d 449, 453 (9th Cir. 1994). However, the court may  
25

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1 consider documents “whose contents are incorporated into and integral to the complaint  
2 and whose authenticity no party questions, but which are not physically attached to the  
3 pleading.” *T&H Servs., LLC v. Choctaw Def. Servs.*, 2019 U.S. Dist. LEXIS 101898,  
4 \*7, 2019 WL 2505028 (U.S.D.C., D. Alaska, June 17, 2019), citing *Branch v. Tunnell*,  
5 14 F.3d 449, 453 (9th Cir. 1994).

6

7 **B. Plaintiffs’ Allegations Fail to Support Their Claim for Declaratory  
Relief**

8 Plaintiffs seek a declaration that Defendants must continue the Policy in force  
9 without payment of additional premiums. However, a review of the terms of the Policy  
10 demonstrate that Plaintiffs’ allegations do not plausibly support a contractual duty for  
11 Transamerica to maintain the Policy in force without payment of the required premium.

12

13 **1. The Policy**

14 The Policy was issued by Bankers United Life Assurance Company to both  
15 Vernon and Lila Sycks with an effective policy date of June 2, 1993. Complaint, Exh.  
16 1 at 3. The Policy provided a death benefit of \$231,160.43. *Id.* The Sycks paid an  
initial premium of \$50,000. *Id.*

17 As indicated in the title of the Policy, “Last Survivor Flexible Premium Interest  
18 Indexed Universal Life Insurance Policy”, the premiums are “flexible,” but they are  
19 subject to the requirements and limitations set forth in the Policy. Complaint, Exh. 1 at  
20 7-8. These requirements include that premium is owed to keep the Policy in force when  
21 the accumulation value of the policy is no longer enough to cover the monthly  
22 deduction amount for the cost of insurance. *Id.*, at 8. When premium is due, the Policy  
23 goes into a grace period and if the required premium is not paid before expiration of the  
24

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1 grace period, the policy lapses. *Id.* The Policy can be reinstated after a lapse for  
2 nonpayment of the premium, if certain conditions are met. *Id.*

3       The premium requirements and limitations are set forth in the section of the  
4 Policy entitled “Premiums”, with subheadings for “Grace Period” and “Reinstatement.”  
5 Complaint, Exh. 1 at 7-8. This section provides, in pertinent part as follows:

6       Premiums may be paid in any amounts, at any times, you elect, while  
7 one of the Insureds remains alive, and subject to requirements and  
8 limitations described below.

9                   The initial premium is due on the Policy Date. ...  
10          You may pay succeeding premiums in amounts and  
11         on dates you elect, as long as the total of premiums  
12         paid in any policy year after the first does not  
13         exceed the Maximum Annual Premium, and the  
14         total of premiums paid in all policy years does not  
15         exceed the greater of the Maximum Single  
16         Premium and the Maximum Annual Premium  
17         multiplied by the number of Policy Years... this  
18         policy has been in force. These Maximum  
19         Premium amounts are shown on page 3 [<sup>2</sup>].

20                   ...

21                   Grace Period

22                   We allow a 61-day grace period following the date  
23         a premium payment is required to keep this policy  
24         in force. A premium will be required if, on the last  
25         day of a policy month, the Policy Value is less than  
       the Monthly Deduction scheduled to be  
       made. Your policy will continue in force during  
       the grace period. If we do not receive payment  
       equal to at least two Monthly Deductions, this  
       policy will lapse without further value, as of the  
       last day of the Policy Month for which the last  
       Monthly Deduction was made, but not until we

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25       <sup>2</sup> The Policy Specifications on page three indicate: “Maximum Annual Premium:  
\$5,184.93 and Maximum Total Premium: \$50,000.00.”

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1 mail a 31-day notice to you at your last known  
2 address.

3 *Id.* at 7-8.  
4

5 The next subheading in the “Premiums” section of the Policy is “Reinstatement.”  
6 Complaint, Exh. 1 at 8. This subsection provides the requirements for reinstatement  
7 after the Policy has lapsed for nonpayment of premium. These requirements include  
8 the payment of premium in an amount at least equal to two Monthly Deductions<sup>3</sup>.

9 Additionally, the application materials make up part of the Policy<sup>4</sup> and they  
10 included an illustration prepared for the Plaintiffs that provided information regarding  
11 when the Policy would require additional premium to remain in force given their initial  
12 premium payment of \$50,000.00 (“Illustration”). The “duplicate copy” of the Policy  
13 that Transamerica provided to Plaintiffs in 2021, as referenced in paragraph 6 of the  
14 Complaint, included the Illustration, which is entitled “Statement of Policy Cost and  
15 Benefit Information.” See Declaration of Emily Tracey (“Tracey Decl.”), Exh. A, p. 27.

16 The Illustration provides that the Policy would lapse after a certain amount of  
17 time if Plaintiffs did not pay any additional premiums over their initial \$50,000  
18 premium payment. Tracey Decl., Exh. A, p. 27. The Illustration shows the projected  
19 policy value over the first ten years of the life of the Policy at an interest rate of 7.02%  
20 versus the guaranteed values over time of 4%, given Plaintiffs’ initial premium  
21 payment of \$50,000. The Illustration also indicates that the values will be different  
22 than those shown depending on payment of premiums, policy loans or withdrawals, or

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23 <sup>3</sup> The Policy explains the monthly deductions in a section of the Policy, titled “Monthly  
24 Deductions” which immediately follows the “Premiums” sections.

25 <sup>4</sup> The Policy expressly provides under the subheading “Entire Contract” in its “General  
Provisions” section: “All of [the Policy’s] pages, the applications, copies of which are  
attached at issue, and all endorsements and imprinted or attached riders make up the  
entire contract.” Complaint, Exh. 1 at p. 18.

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1 current interest and Cost of Insurance rates. Most importantly, it states, “The policy  
2 will terminate without further value, based on guaranteed interest and Cost of Insurance  
3 rates, if additional premiums are not paid before the end of the 24<sup>th</sup> policy year.” The  
4 Sycks did not pay any further premium, and the policy outperformed this estimate, but  
5 it did eventually lapse.

6 Transamerica provide Plaintiffs notice that the Policy would lapse if they did not  
7 pay the required premium in a letter dated June 3, 2021. Complaint, Exh. 2. Plaintiffs  
8 do not dispute that they did not pay the required premium in response to this notice.  
9 Rather, they complain that Transamerica refused to withdraw the lapse notice and the  
10 request for additional premium. Plaintiffs insist that they satisfied their contractual  
11 obligation to pay premium on the Policy when they paid the initial premium of \$50,000  
12 in 1993.

13 **2. Alaska Rules of Policy Interpretation Do Not Support a  
14 Declaratory Judgment that Transamerica is Required to  
15 Maintain the Policy in Force Despite Plaintiffs’ Failure to Pay the  
16 Required Premium**

17 In diversity cases, state law governs determination of substantive matters. *Erie*  
18 *R.R. Co. v. Tompkins*, 304 U.S. 64, 78-80, 58 S.Ct. 817, 82 L.Ed. 1188 (1938). Under  
19 Alaska law, “contract interpretation is a question of law.” *ConocoPhillips Alaska, Inc.*  
20 *v. Williams Alaska Petroleum, Inc.*, 322 P.3d 114, 122 (Alaska 2014). “The  
21 construction of an insurance contract is a matter for the court, unless its interpretation is  
22 dependent upon the resolution of controverted facts.” *O’Neill Investigations, Inc. v. Ill.*  
23 *Employers Ins. Of Wausau*, 636 P.2d 1170, 1173 (Alaska 1981).

24 “In addressing the proper interpretation of an insurance policy, [Alaska courts]  
25 look to ‘(1) the language of the disputed provisions in the policy, (2) other provisions in

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1 the policy, (3) extrinsic evidence, and (4) case law interpreting similar provisions.’ ”  
2 *State Farm Mut. Auto. Ins. Co. v. Houle*, 269 P.3d 654, 657-58 (Alaska 2011).  
3 “Insurance contracts are interpreted ‘in accordance with the reasonable expectations’ of  
4 the insured. This is true even if ‘painstaking study of the policy provisions would have  
5 negated those expectations.’ ” *Safety Nat'l Cas. Corp. v. Pacific Employers Ins. Co.*,  
6 927 P.2d 748, 750 (citations omitted) (first quoting *Fulton v. Lloyds & Inst. Of London*  
7 *Underwriting Cos.*, 903 P.2d 1062, 1068 (Alaska 1995); then quoting *State v.*  
8 *Underwriters at Lloyds*, 755 P.2d 396, 400 (Alaska 1988)). Insurance contracts are also  
9 construed according to “ordinary and customary usage.” *Houle*, 269 P.3d at 658. Any  
10 ambiguous terms are to be construed in favor of the insured. *Id.*

11 Plaintiffs base their interpretation of the Policy’s premium requirements  
12 exclusively on the “Maximum Total Premium” indicated as \$50,000 on the Policy  
13 Specifications page, despite the Policy’s provisions under the heading “Premiums,”  
14 which explain the requirements and limitations with regard to premiums, and  
15 unambiguously contradict Plaintiff’s interpretation. The Policy indicates that a  
16 premium payment will be required to keep the Policy in force “if, on the last day of a  
17 policy month, the Policy Value is less than the Monthly Deduction scheduled to be  
18 made.” Complaint, Exh. 1 at.8.

19 The Policy includes a provision setting the maximum premium over the life of  
20 the Policy as follows: “the total of premiums paid in all policy years does not exceed  
21 *the greater of the Maximum Single Premium and the Maximum Annual Premium*  
22 *multiplied by the number of Policy Years ... this Policy has been in force.*” *Id.*  
23 (emphasis added). The Policy indicates that these maximum values are provided on  
24 page three, the Policy Specifications page. *Id.* The two maximum values indicated on  
25

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1 the Policy Specifications page are the “Maximum Annual Premium” and “Maximum  
2 Total Premium.” This is an obvious scrivener’s error in referring to the “Maximum  
3 Single Premium” as the “Maximum Total Premium.” However, this one scrivener’s  
4 error does not change the terms of the Policy. See *U.S. v. 200 Units of Rentable*  
5 *Housing*, 2007 WL 4510338, \*4 (D. Alaska, 2007) , aff’d 668 F.3d 1119 (9<sup>th</sup> Cir. 2012)  
6 (lease term was 23 years where the 23-year term appeared throughout the lease, and the  
7 inconsistent term appeared only once in the lease).

8       Although ambiguous terms are to be construed in favor of the insured,  
9 “ambiguities only exist when there are two or more reasonable interpretations of  
10 particular policy language.” *Houle*, 269 P.3d at 658. “[I]t would be error to ‘consider a  
11 single term in isolation,’ because “[a]n interpretation of an insurance policy must also  
12 account for the language of other policy provisions, relevant extrinsic evidence, and  
13 case law interpreting similar provisions in order to determine what the reasonable  
14 expectations of an insured would be.” *Hahn v. Geico Choice Insurance Co.*, 420 P.3d  
15 1160 (Alaska, 2018). In *Hahn*, the Alaska Supreme Court found no error in the trial  
16 court’s conclusion that a “reasonable insured would read all the terms of the policy in  
17 context, and [would] not assign undue weight to a single term.”

18       Plaintiffs’ interpretation is not reasonable because it gives undue weight to the  
19 single phrase “Maximum Total Premium” and contradicts the provisions in the body of  
20 the Policy that explain when additional premiums will be required, that the Policy will  
21 lapse if the required additional premium is not paid, and the limitation on total  
22 premiums required over the life of the Policy.

23  
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1           **C. Plaintiffs' Allegations Do Not Support a Cause of Action for Breach**  
2           **of Contract**

3           Plaintiffs' breach of contract claim against Transamerica fails because despite  
4           Plaintiffs' unreasonable interpretation of the Policy, the factual allegations, if assumed  
5           true, establish that Transamerica acted in accordance with the terms of the Policy in  
6           refusing to withdraw the lapse notice. The same review of the Policy provisions, that as  
7           discussed above demonstrates the insufficiency of Plaintiff's cause of action for  
8           declaratory relief, also demonstrates the insufficiency of Plaintiff's cause of action for  
9           breach of contract. Plaintiffs have not and cannot allege a contractual obligation  
10          breached by Transamerica. To the contrary, the allegations indicate that  
11          Transamerica's actions were consistent with the provisions of the Policy.

12           **D. Plaintiffs' Allegations Do Not Support a Cause of Action for Breach**  
13           **of the Covenant of Good Faith and Fair Dealing**

14           “Under Alaska's contract law, ‘the covenant of good faith and fair dealing ... is  
15          implied in all contracts.’ ” *Lockwood v. Geico Gen. Ins. Co.*, 323 P.3d 691, 697 (Alaska  
16          2014) (quoting *State Farm Mut. Auto. Ins. Co. v. Weiford*, 831 P.2d 1264, 1266 (Alaska  
17          1992)). Although the Alaska Supreme Court has “declined to define the elements of the  
18          tort of bad faith in an insurance contract, [Alaska] precedent makes clear that the  
19          element of breach at least requires the insured to show that the insurer's actions were  
20          objectively unreasonable under the circumstances.” *Id.* To prove bad faith under Alaska  
21          law, a plaintiff must prove, and therefore plausibly allege, that the insurer's decision  
22          was “made without a reasonable basis.” *Id.* at 698.

23           Alaska courts have rejected the notion that reasonableness always presents a  
24          question of fact. “Although questions of reasonableness often must be resolved at trial  
25          .... where an insurer establishes that no reasonable jury could regard its conduct as

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unreasonable, the question of bad faith need not and should not be submitted to the jury.” *Hillman v. Nationwide Mut. Fire Ins. Co.*, 855 P.2d 1321, 1325 (Alaska 1993). On the contrary, a court may find no bad faith as a matter of law where the insurer acts in reliance on a reasonable interpretation of an explicit policy provision—even if the court interprets the provision differently or otherwise refuses to apply it. *Id.* at 1325-26; also *Copper River Seafoods, Inc. v. Chubb Custom Ins. Co.*, 2018 WL 6220064, at \*11-12 (D. Alaska Sept. 19, 2018) (no bad faith where insurer relied on policy exclusion to deny coverage even though court found exclusion inapplicable). Importantly, a court can make that determination in the context of a motion to dismiss if the reasonableness of the insurer's conduct is shown by the plaintiff's allegations and policy terms. See *Nowak v. Genworth Life and Annuity Ins. Co.*, 2017 WL 5894512, \*5-6 (D. Alaska Aug. 31, 2017); *Barba v. Allianz Global Risks US Ins. Co.*, 2016 WL 6236324, \*9 (S.D.N.Y. Oct. 25, 2016) (applying Alaska law).

In *Nowak v. Genworth Life and Annuity Insurance Company*, the District Court of Alaska granted a Rule 12(b)(6) motion to dismiss claims against an insurer for negligence and bad faith in relation to the insurer's notice to plaintiff of cancelation of a term life insurance policy due to nonpayment of premium and its denial of claim for the life insurance benefit upon the death of the insured. *Nowak*, 2017 WL 5894512 (D. Alaska, August 31, 2017). Likewise, this Court should dismiss Plaintiffs' bad faith claim against Transamerica. As discussed above, Transamerica's refusal of Plaintiffs' demands to withdraw the lapse notice was consistent with the terms of the Policy. Whereas the Policy's reliance on a single phrase on the Policy Specifications page, in contradiction of the unambiguous terms of the Policy, is unreasonable.

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Although emotional distress is a category of damages available for bad faith, the court must find that Transamerica acted in bad faith. As discussed above, Transamerica's conduct has been consistent with a reasonable interpretation of the provisions in the Policy, and therefore cannot be found to be in bad faith. Likewise, there is no basis for punitive damages, which require "outrageous" conduct. *State Farm Mut. Auto. Ins. Co. v. Weiford*, 831 P.2d 1264, 1266 (Alaska, 1992).

#### **IV. CONCLUSION**

Plaintiffs' allegations do not plausibly support a declaratory judgment against Transamerica or causes of action for breach of contract or breach of the covenant of good faith and fair dealing. Therefore, Transamerica respectfully requests that the Complaint be dismissed with prejudice under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted.

Dated: March 3, 2022

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